

Considerations upon the Act of Parliament, for reversing the Judgment in a Quo Warranto against the City of London, and for restoring the City of London to its Ancient Rights and Privileges.

1. **T**HE said Judgment, and the Proceedings thereupon, are declared to be Arbitrary and Illegal, p. 104. and in pursuance of this Declaration, that Judgment is reversed; and the City restored to all its Ancient Rights, Liberties, and Franchises whatsoever; and all Charters, Letters Patents, Grants and Commissions, during the time of the avoidance of the Charter in the two last Reigns, for incorporating the Citizens and Commonalty of the said City, or touching, or concerning any of their Liberties and Franchises, &c. are declared and adjudged to be null and void, to all intents and purposes whatsoever, p. 104, to 107.

2. Notwithstanding this, it was not reasonable, that the City, which was no way consenting to its own disfranchisement; but was wholly Passive in it, should suffer or be prejudiced, as to its main concerns; but that all Proceedings in Law or Equity, all Leases made or granted, with the Cautions and Provisoes limited in the Act; all Judgments, Decrees, and Sentences had, and obtained by any Person or Persons, taking upon them to be Trustees for, or concerning any Lands, &c. all Freedoms, to which any Persons being natural Born Subjects or Denizens, had been admitted since the said Judgment given, that all these should stand and remain in full Force and Effect; so far as all or any of the said Proceedings were or would have been, had the Charter not

been voided, materially Legal; being transacted and done according to the usual Methods, and with the usual Forms of Law and Justice, respectively belonging and appertaining to them, because though all these things for want of a Charter, were now transacted by Commission from the King; yet if all the Proceedings upon the said Commission, for the space of so many Years had been declared null and void; the Restitution of the Charter would have been a far greater mischief than the avoidance of it, and the inconveniences would have been unspeakable, which the City must have suffered by the nullity of so many reasonable and just, as well as weighty and important Proceedings; and accordingly it is wisely provided by this Act, that all the Proceedings aforesaid, though Illegal in themselves, considering the root of Authority from whence they sprang, yet shall be deemed and adjudged to be firm and valid, as if the Charter had been standing, and the same Affairs had been transacted in the old and usual course, under the Authority and influence of the same.

3. When it is said in general terms, that the Judgment given against the Charter, and the Proceedings thereupon, is and were Illegal and Arbitrary; and that all Charters, Letters, Patents, Grants, Commissions, &c. For Incorporating the Citizens and Commonalty of the said City, or any of them, or touching, or concerning any of their Liberties and Franchises, &c. are declared and

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adjudged to be null and void, to all intents and purposes whatsoever.

And when it is then further added, for the reason that hath been given, *viz.* to prevent many and great mischiefs and inconveniences, that would otherwise accrue; that notwithstanding any thing contained in the said general Clauses; yet in some particular cases mentioned in the Act, that the Proceedings upon, and after the said Judgment, shall be, and are confirmed as to their effect; though in their cause, that is, to say the Authority from whence they were derived, they are declared and adjudged to have been Arbitrary and Illegal; from these two things considered and reflected upon, there are these ten very natural Corollaries, or deductions to be made.

First, That the general Clauses would have been in vain, whereby the Judgment against the Charter, and the Proceedings thereupon are declared to be Illegal, and the said Proceedings to be null and void; nay, they would have been absurd and ludicrous; unbecoming the wisdom and gravity of that great Assembly, by which with the Royal Assent they were enacted; if after this either expressly, or by any reasonable *innuendoes*, or intimations of such a design; all the Proceedings upon the said Judgment, had been intended or implied, to be by the same Legislators in the same Act Authorized and Confirmed.

Secondly, The Provisoos themselves would have been equally incongruous and absurd; if all those Acts and Proceedings upon or after the said Judgment, which were not confirmed by any such Provisoos, were notwithstanding to stand good, and remain in full Force and Effect.

Thirdly, Thus much therefore is certain, and almost self-evident to every Person of common understanding, that where there is a general clause of nullity and avoidance of all the Acts of an Illegal Power, to which there are subjoined, some particular exceptions by particular Provisoos made in that behalf; that all those Acts, which neither

come within the Letter of the said Provisoos, nor so much as within the reason and intention of them, are by the general Clauses evaded and annulled, and the general Rule, in cases not excepted, is fortified and strengthened by the exceptions from it, according to that old Maxim, which is grounded upon the highest and the plainest reason, *exceptio firmat regulam in non exceptis.*

Fourthly, The word *Alderman*, not being so much as named thoroughout this whole Act of Parliament, it is of necessity to be granted, that all those Aldermen, that were admitted into that Honourable Court, after Judgment given against the City Charter, till the date of this Act of Parliament, for the reversing of that Judgment, that is to say, till the twentieth day of May 1690, were illegally admitted; that Judgment and the Proceedings thereupon or thereafter, till the time of restitution, being declared to have been Arbitrary and Illegal.

Fifthly, The said Admissions being Arbitrary and Illegal in themselves, and not being confirmed by any Special Provisoos, nor contained within the true reason of all, or any of the said Provisoos; they are by this Act of Parliament made null and void, that is to say, those Gentlemen so unduly and illegally admitted, have no Right to wear their Gowns, or to Sit and Act as Aldermen any longer, in virtue of any such Illegal Admission, not confirmed by this Act.

That they do not come within the Letter of any of the Provisoos, is plain, because they are not so much as mentioned or named in any of them; so that it cannot be said there is any express Provision made in their behalf.

That they are not included within the reason or intention of any of them, (tho this would hardly be sufficient to give them a Title at Common Law) will be plain to any Man, that shall duly weigh, and consider the reason of the Provisoos, which is twofold.

First, that the Publick, or the City in common, and those with whom they transacted

acted might not suffer, for want of a just and reasonable Confirmation of all those materially Legal Acts and Proceedings, which were had or done from the avoidance of the Charter, to the restitution of it.

Secondly, That private Persons, who had bought Offices within the Mayor or Sheriffs, or in any wise in the Cities gift, and who were competently qualify'd for their employments, and capable of them had the Charter stood, might not be turned out of them, to the great loss, if not ruin of themselves and Families, only for want of a Just and Legal Title; a defect which the Parliament by their Authority, was very well able to supply, as accordingly it hath done; and as in strict equity it was obliged to do; but of this a little more shall be said in its proper place.

Now as to the First of these reasons of the said Proviso; it is manifest the Aldermen are not included in it, nor in the second neither, for it could be no disadvantage to the City in general, nor to themselves in particular, for them to resign their Seats in the Court of Aldermen, and put themselves upon a new Choice in their respective Wards, any more than it was in the Case of Common Council-men, of whom a new Choice was expressly enjoined; nay, the Majority have agreed, that it was for the City's Interest to chuse a new Common Council; because they have chosen other Members, for reasons that do as nearly concern some of the present pretended Court of Aldermen, as they did some of the late Common Council.

It could be no disadvantage to themselves, to be dismiss'd from their Station of Aldermen of the City, any more than for others, to be dismiss'd from the Common Council, for neither the one nor the other gets any thing by the Bargain, only the trouble of an Alderman is so much the greater, as Courts of Aldermen are more frequent than Common Councils; and there is a charge of congruity, though not of absolute necessity attending it, they being obliged for the Honor of the City, to live in some greater port and equipage than they did before, and for these

two reasons, because they could not well spare so much time from their private Affairs, and because of a Charge accompanying that Station, which cannot without dishonor be avoided; there are multitudes that have chafed from time to time, rather to pay a considerable Fine to the Chamber of London, than undergo the unprofitable fatigue and trouble of that dignity, besides the expence and charge, that usually goes along with it.

Sixthly, Which is the sixth Corollary, deducible from the premises: He that is no Alderman within the meaning of this Act, by which all those Acts and Proceedings, during the avoidance of the Charter, are expressly declared and adjudged to be null and void; which are not by some especial Proviso particularly confirmed; I say, such a Person, let him be who he will, can be no Lord Mayor, because the Lord Mayor according to the Ancient Customs and Usages of the City, is to be chosen out of the Court of Aldermen, and all those Ancient Usages, and Customs, are by this Act of Parliament restored and confirmed.

Seventhly, Sir, T. P. who laid down his Gown, while the City Charter was still standing, and took it up again without any Legal Warrant after the date of the Judgment, and before that of this Act of Parliament, is no Legal Alderman; and by consequence, he cannot make a Legal Lord Mayor.

Eighthly, Those Gentlemen, who have continued and sat as Aldermen, during all this interval of the avoidance of the Charter; and were so by a due and lawful Election and Designation thereto, before the Judgment given, have still a right to continue, Sit and Act in that capacity, now the said Charter is restored, and the said Judgment reversed; because the declared End and Scope of the Act of Parliament, made upon this occasion, was to settle and confirm the Ancient Constitution, as it stood when the Charter was seized into the King's Hands; of which Constitution they themselves were an unquestionable Part; and if the Aldermen

since the Judgment do pretend a Right, yet they cannot but confess at the same time, that those that were made so before it, have, if not a greater, for an absolute Right will admit of no comparisons; yet a much more plain and manifest Right than they.

Ninthly, Those of the Court of Aldermen, that lay'd down their Gowns, and desisted from any further attendance upon that Court, at any time between the Judgment given, and the Restitution of the Charter by the Act of Parliament for reverting of it, being Legal Aldermen while the Charter was standing, and at the time of its avoidance; may, as many of them as are now surviving, take up their Gowns again, and Act in the same capacity that they did before; they not making a voluntary surrender, but conceiving themselves under a Moral incapacity to Act, by reason of the Illegality of the Commission it self, or not liking the Company that was obtruded upon them, whom they might not look upon as Legal Assessors in that Honourable Court; or fearing to be questioned in Parliament for what they did; as this very Parliament hath declared, the Seizure of the Charter, and the Proceedings consequent upon it, to have been Arbitrary and Illegal; and therefore they resigned, not because they would not Act; but because they thought they could not, being morally disabled for any further Service, for *id solum possumus, quod possumus de jure*; but the Charter being restored, the capacity of acting, returned together with it, and the surrender being an involuntary thing, created by scruples which they did not make, and which they could not get over, the Right of acting still remained, whenever the Legal capacity should return; as a Lawyer lays by his Gown, and appears at no Bar in the time of the Vacation; reserving still to himself a Right of doing both, when ever the Term shall return.

However, this is spoken, and the Author humbly desires it may be so interpreted, without any reflection upon those honest and worthy Gentlemen, who continued still to

act, during all the time of the avoidance of the Charter; which as it must be confessed, to have been a signal Service rendered to the City and the Nation, by influencing in some measure the Proceedings of the Court, and by hindering of worse Men from Sitting in their Places; so was it an undoubted Argument of courage and a publick Spirit; and no sign of want, either of Integrity or Judgment; for the Judges and the Lawyers themselves, were not agreed, as to the Legality of the Seizure of the Charter and its Franchises into the Kings Hands; and much more then might those, who do not profess the Law, but depend wholly upon others for their Sentiments in these cases, be divided in their Opinions concerning it; and now in God's Name let them unite together, for the behoof and service of their Country in the general, and of this Famous and Renowned City in particular; since they both confess the Restitution to be Legal, whatever disputes or controversies may arise concerning the Seizure, which there is now no reason to keep stirring any longer.

Tenthly, and Lastly, From all that hath been said, there is this further Confectary to be deduced, viz. that the Legal Court of Aldermen, now the Charter is restored, doth and will consist of three sorts of Persons.

First, such as were Legal Aldermen before the Seizure, and have continued ever since to act in that capacity.

Secondly, Of such as laid down their Gowns, since the giving of Judgment against the City; being before it Legal and duly qualify'd Aldermen of the same, if they please to resume their Gowns and their Possession again.

And thirdly, Such as shall be Legally presented by the respective Wards, and accepted by the Court of Aldermen, to supply the vacancies in those Wards, where an Alderman is wanting; but all that took upon them that Stile and Title, during the avoidance, not being Legally possessed of it before; are by this Act of Parliament manifestly prohibited from acting any longer, either to the prejudice

judice of those that have a Legal Right, or otherwise, where there is a vacancy, without a new Election.

Fourthly, But in answer to all this, there is a Clause of provision in the Act of Parliament, which is turnpt up in defence of those Gentlemen, who acted under the Name and Notion of Aldermen of this City, whom the foregoing Corollaries would exclude, it will be worth, our while therefore impartially to consider it; the whole Clause is as followeth.

And be it Enacted by the Authority aforesaid, that all Officers and Ministers of the said City, that rightfully held any Office or Place in the said City or Liberties thereof, or in the Borough of Southwark, at the time when the said Judgment was given, are hereby confirmed, and shall have and enjoy the same as fully as they held them at the time of the said Judgment given; except such as have voluntarily surrendered any such Office or Place, or have been removed for any just cause; and that every Person who since the said Judgment given, hath been chosen, admitted, or placed into any Office or Employment within the said City, upon the death, surrender, or removal, as aforesaid, of the former Officers, shall be and is hereby confirmed in his said Office or Employment, and shall have and enjoy the same in as full and ample manner, as if he had been admitted or placed therein according to the Ancient Customs of the said City.

For the right and clear understanding of which Clause, there are these following things to be considered.

First, It can never be too often suggested and reflected upon in this case, that the Seizure of the Charter, and the Proceedings thereupon, being declared to be Arbitrary and Illegal; it must needs be very absurd

and incongruous, to suppose, that any more of the said Proceedings was intended to be confirmed by this Act of Parliament; but only such as could not be annul'd or vacated without a publick Mischief; or at least a private hardship and injustice to particular Persons, who had a fair title in equity to better usage, and must suffer extremely by the repeal of all those Acts, which passed from and under the Commission; to confirm the said Proceedings any farther than this, being to Abett Arbitrary, and Illegal things for no reason at all, unless it were because they were Arbitrary and Illegal; and at that rate, it had been more suitable to the same design to confirm the Judgment given, which would at the same time have justly'd all the Proceedings thereupon, than to reverse it.

Secondly, This Paragraph by the very wording and penning of it, however obscure and ambiguous it may be pretended to be, does manifestly contain matter of privilege, benefit, and advantage, and this is the meaning of those words, that all Officers and Ministers of the said City, that rightfully held any Office or Place, &c. are hereby confirmed, and shall have and enjoy the same, as fully as, &c. and afterwards, that every Person, who since the said Judgment given, hath been chosen, &c. shall be, and is hereby confirmed in his said Office or Employment; and shall have and enjoy the same, in as full and ample manner as if &c. now the word *confirming*, plainly implies a Privilege or Emolument, accruing from the Office or Thing confirmed; and looks as if it were something worth contending for, worth putting in a claim of equity, in order to be confirmed; and the having and enjoying as fully, and in as full and ample manner as, &c. are terms denoting a considerable advantage, and such as amounts to a subsistence for life at least, if it will not add Ornament and Splendor to it, as many of the City Offices are known to do by the Salaries, and Perquisites respectively belonging to them, now if any Man will tell me, what the profit or advantage of being an Alderman

Alderman lies, unless it be an advantage to spend more Money, to keep greater Hospitality within doors, and to appear with greater Port and Grandeur without; to be at more trouble, and after all, to have nothing but his labor for his pains; then I will confess, that an Alderman is an Office within the meaning of this Clause, and that it was worth the while to be confirmed and to sue and sollicite to be confirmed in a Station, which so many do yearly and almost daily pay considerable summs of Money to avoid, and which others have laid down, out of mere weariness and irksomeness to continue any longer in it; and out of a sense of the damage and inconvenience, which accrued by so frequent diversions and avocations, to their own private and domestick Affairs; but if all this be quite contrary to the very truth; if there be no advantage in it, but a great deal of trouble, fatigue, and unnecessary expence altogether, for the sake of others, who are the only gainers by it, then this is not an Office within the meaning of this Clause, by which there is nothing more certain, than that a benefit or advantage was intended to be convey'd to all, that have any interest or concern in it.

See a Book Intit the Present State of Lond. and another called the Royal Charter of Confirmation, &c.

True indeed it is, that the Aldermen, besides that they are Presidents, or Foremen, or Chairmen of their respective Wardmotes; and that they Sit in that Character, upon the Bench at *Guild-hall*; having the chief Administration of the Affairs of the City, committed to their Trust and Care; they are likewise Justices, or Keepers of the Peace, in their Respective Wards, and all that are past the Chair, and the three that are next it, have the same jurisdiction all over the City, and some of them all over *Middlesex* and *Surrey*; but this though it be indeed a great Honour and Dignity; yet it is a greater Burthen, without any proper advantage to themselves, whatsoever it may be to the Clerks acting under them; and therefore as such they do not

come within the meaning of this Proviso; which was to restore and confirm such Offices and Rights, as were of advantage and benefit to the Possessors.

And in consideration of the great trouble, charge and expence they are at, by taking the Royal Charter of Stile and Character of Confirmation p. 64. Aldermen of the City upon them; it is expressly ordain'd in one of the Royal Charters, which is confirm'd by, and contained in the great Royal Charter of K. *Charles II.* that as long as they shall continue Aldermen there, and shall bear the charge of Aldermen proper, and also those, which before had been Aldermen; and have also with their great costs and expences Born the Offices of Mayoralty, shall not be put in any Assizes, Juries, or Attaints, Recognizances or Inquisitions out of the said City; and that without that City, neither they nor any of them be made Collectors, or Collector, Assessor, Taxer, Overseer, or Comptroler of the Tenth, Fifteenth, Taxes, Tallages, Subsidies, or other charges or impositions whatsoever, &c. So, that it seems not only the Aldermen, but the Mayor himself, notwithstanding any contingent advantages, which may or may not happen, have been always reckoned to be in Stations of great expence and trouble; and though it be a privilege and advantage to the City, to be governed by such Persons of their own chusing, and of their own Body; yet, that to the Persons themselves, it was, and was looked upon, as an inconvenience and a Burthen; and for this reason, neither the Mayor nor Aldermen come within the meaning and design of this Clause; and the same may be said likewise of the Sheriffs, who are at a very great charge, in the discharge of that weighty and important Trust, without any prospect, but what is very remote and very contingent, of any thing like an equivalent advantage in the time of their Mayoralty, when it shall come; which depends wholly upon the uncertain lives, as well of themselves as others; of themselves, because they

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know not whether they shall live so long; of others, because they know not whether they will dye then or no; the great advantage of the Lord Mayor, consisting in the disposal of those Offices by Sale, that fall by decease of the several Officers that fill'd them, during the time of his Government and Administration.

Thirdly, Furthermore, the said Offices hereby confirmed to the respective Offices of the same, are in this Proviso called not only *Offices*, but also *Places* and *Employments*; now if a Man should ask the Question, what *Place* such an one was possessed of, or was invested in? It would be absurd in this case, to say he was an *Alderman*, because he gets nothing by it; but if you say he is Commissioner of the *Custom-house*, or he is Post-master General; these indeed are *Places* in the *English* Language; because there is profit and business mixt together, a *Place* being generally understood by an elliptical or curtailed way of speech among us, of a place of profit or advantage; it cannot be denied, that this is the most usual, and the most natural acceptation of the Word; but whatever becomes of *Place*, *Employment* is certainly a Man's livelihood and business; that by which he gets his subsistence in the World, and if the Question were asked, what *Employment* such a one is of? it would be ridiculous to answer, he is an *Alderman*, a *Mayor*, or *Sheriff*; because by *Employment*, is meant that which is a Man's own proper business, for the acquitting an Estate, or for the support of himself and Family; whether it be any Craft or Mystery in the way of Trade, or any *Place* or *Office*, with salary or perquisites or both, whether the income or gain be more or less, so it be that in which a Man's particular business consists; and by which he endeavours, either to get an Estate by honest and lawful means, or at least to provide a subsistence for himself, or those for whom he is obliged by Nature, Custom, or Law, to make the best provision he can; but if to be an *Alderman*, a *Mayor*, and *Sheriff*, be not in the *English*

Language an *Employment*, then in an *English* Act of Parliament; nothing is more certain, than that they cannot come within the meaning of this Proviso.

Fourthly, But now if by *Office*, *Place*, and *Employment* in this Paragraph, we understand all those Offices in the City gift and service, from the Recorder to the meanest Officer, belonging to the Lord Mayor, or *Sheriffs*, or to either of the *Compters*; receiving wages and perquisites for the same, and having a Legal tenure or possession therein, then the sense of this Paragraph is very easy, and that is manifestly the only true sense when all is done; that whereas, by another Proviso in this Act, care is taken, that all the Legal Proceedings, that passed from, and after the Judgment given against the City Charter, that is to say, all those Proceedings, either in Law or Equity, that wanted nothing to make them Legal, but only a Legal Authority and Jurisdiction, should be ratify'd and confirmed, as in Reason and Justice they ought to be, to prevent the disorder and confusion, that would otherwise ensue upon their nulling and avoidance, so as to private Persons, who were legally possessed of *Offices* and *Employments* in the City Gift; while the Charter and its Authority were yet standing, and in full force and effect; which *Offices* and *Employments*, were for the most part their livelihood and subsistence, which they had purchased with their Penny; and which they had still continued, to the great Service and Benefit of the City and its Government, to exercise and administer, during all the time that the Charter stood null and void, by virtue of the Judgment upon the *Quo Warranto*; it would have been the greatest hardship in the World, to reward all these Services with an ejection, out of their respective *Places*; or to put them upon the trouble or hazard of a new Choice, when they had already purchased and pay'd for their *Employments*; and when the Charter being restored, they were so naturally and rightfully restored together with it, by having formerly belonged to it; and a-

cted by and under its influence and virtue.

Again, as to those who were admitted, or chosen into any such Offices after the date of the Judgment, or between that and the time of the reverling of it, coming in upon decease, or upon voluntary surrender, or upon ejection for a just and lawful cause; they also are by this Proviso confirmed, as in equity they ought to be, their employments being for the most part their livelihood and subsistence; they having generally purchased them with their Money; being duly qualify'd for them, and having served the City, many of them for several Years, with diligence and faithfulness in them. For which reasons, taken all of them together, they had a great deal of equity on their side, and to eject them, or put them upon a new risque, a new purchase, or a new choice in these circumstances, would have been the greatest and the plainest hardship in the World: But now nothing of all this concerns those Aldermen, that have been chosen or admitted since the avoidance of the Charter, they have nothing of equity to plead for themselves; neither can they complain of any hardship in being ejected, or put upon a new choice in the vacant Wards, neither have they any thing to plead for themselves, but only a Possession which in its root, according to this very Act, is Arbitrary and Illegal; and the Parliament not designing to confirm Arbitrary things for no reason, but only where the things, though defective in their Authority, were materially just, and where there would be cruelty and hardship in making them null and void; it is manifest that they, as they do not come within the letter of this Paragraph, where the word *Alderman*, is not so much as mentioned, so neither have they any share, or Portion in the true meaning and intention of it; which was to shew mercy in some cases, where equitable reasons did so plainly, and so loudly require it; not to confirm Illegal and Arbitrary things in all, which would have been to confirm and justify the Judgment given,

instead of disallowing or condemning it; which was the first and greatest intention of this Act, and bating the little underwood of equitable Provisoes, is the main timber of which it is built and consists; and if a possession should be pronounced firm for no other reason, but because it was a possession, without regard, whether it were legal or no, this would overthrow and confound all property in the World, and make it impossible for any Man to be ejected out of an Arbitrary Possession, otherwise than by Force of Arms, which is not the legal way, and which would introduce a State of War and Hostility in all times and places.

Fifthly, Further yet, all those above mentioned, are City Officers properly so called, that is, they all Act by an Authority derived from the whole Corporation considered as one intire Body; they are the constant Servants of the City, belonging to the Lord Mayor and Sheriffs for the time being; and it is of such only, that this Paragraph speaks, they are the very words; And be it enacted by the Authority aforesaid, that all Officers and Ministers of the said City, that rightfully held, &c. now an Alderman, though in a very large sense of that word, he may be called an Officer; yet is he not a City, but a Ward Officer, representing in the Court of Aldermen, and acting in the behalf of that particular Ward, for which he serves: An Alderman is not properly an Alderman of the City, or of the whole Corporation; but he is Alderman of the Ward, Foreman, or Chair-man of the Wardmote, in a particular District or Region of the City, and from thence is sent as a Deputy or Delegate into that Superior Court at *Guildhall*; and the Case is the same with the Common Council-Men; they serve also such a number of them in the Common Council, for every particular Ward, and are not City but Ward Officers; who all taken together in both these Courts, make up a Court representative of the whole Corporation, and do transact in their stead, and on their behalf, but taken singly, they are no more City Officers,

cers, then a Parliament Man, is Knight or Burgess for the whole Nation; but a Clerk of the Parliament, and a Speaker of the Parliament, are Servants to the whole Nation; because they are Servants to the whole Representative Body; and the difference between these things is still further clear, by this, that there are distinct Clauses in this Act of Parliament, relating to the Restitution of the City Charter, and the respective Charters and Franchises of particular Companies; and there are also distinct Provisoes for confirming the legal and necessary Proceedings in the one, and in the other; which is as much as to say, what is clear enough in it self, that the whole and part are not the same, and that one part is distinct from another, that the Charter or the Officers of the City, are distinct from those of the Companies of which it consists; that the City Charter or Officer, is not the Charter or Officer of a certain Company, nor *Vice versa*, and the Charter or Officer of one Company, is not the Charter or Officer of another; and by the same way of reasoning a City Officer, and a Ward Officer are distinct things; a Ward Officer is not a City Officer, nor a City Officer as such, the Officer of a Ward, or to reduce the whole matter into plainer terms, that an *Alderman* is not an Officer of the City, properly so called; and by consequence doth not come within the meaning of this Clause.

Sixthly, I have made this comparison, between an *Alderman* and a Parliament Man the rather, not only because it is very natural, because of the Representation of a certain place or district, and the Inhabitants thereunto belonging in both cases; but because *H. 3.* in the 49th. of whose Reign some of our greatest Antiquaries will needs have it, that the House of Commons at least had its first beginning; was also the First Founder of this Institution, of Governing each Ward of the City of London, by its respective *Alderman* thereunto belonging; they are the words of *Stow*, Survey of Lond. p. 696. 1. King John — changed their

Bayliffs into a Mayor and two Sheriffs, to these *H. 3.* added *Aldermen*, at the first eligible yearly, but afterwards by King *Edward III.* made perpetual Magistrates and Justices of the Peace within their Wards; though *Mr. Camden* seems to be of another mind, and tells us, that the *Witena Gemot* or Council of Wise Men among the Saxons, was much the same with what we call a Parliament now-a-days; and in this he is followed by the Lord Chief Baron *Atkins*, in his Learned Discourse of the Antiquity of the House of Commons; but however that be, we do not only read that *Hen. III.* was the Person that set *Aldermen* over every Ward; but in his time, we find mention also of the *Folkemote*, which was the same with our Present Common-Council, who were used then upon Emergent occasions to meet at *Paul's-Cross*, as they do now at *Guildhall*, where sometimes the King himself; sometimes his Chief Counsellors and Ministers of State; and sometimes even Foreign Ambassadors, and Foreign Kings too, with the Prime of our Nobility and Clergy were present, so great and venerable an Assembly was the Common Council of London reckoned in those days.

Seventhly, If Common Council Men, as Representatives of their respective Wards, are not Officers within the meaning of this Provisoe, then neither are *Aldermen*, because they both represent, and both of them represent the very same Persons and Places, though the one do it in a Superior Orb and Station to the other; and therefore this representation, if it do not make an Officer within the meaning of this Clause in one case, neither will it in the other; and especially, when both of these Officers, so called in the largest sense and notion of this word, being of the same nature, which consists wholly in delegation of trust and representation of Persons; yet neither of them are directly named, and therefore, both of them must either be included in it or excluded

See *Holinshe* in the
Reign of *Hen. III.*
p. 262, 263, 264.

by it. Now that the Common Council are not included in this Paragraph, for the Confirmation of Officers is manifest, because a new Election of them is appointed in another Clause p: 111. and if it be said, that this is only an exception out of that general Clause, for the Confirmation of Officers, that cannot be neither, because at that rate the exception would be much larger than the Rule it self; the Common-Council amounting with the *Aldermen*, included, who are a part of it to about 260. which is near an hundred more than the Officers of the City properly so called, who receive Salaries and Perquisites by their *Places*; now this would be so great an absurdity in an Act of Parliament, that it is absolutely necessary first; that the former Paragraph considered by it self, be not understood of all Officers in the general, in the utmost Sense and Latitude of that word; as it imports any Post or Station whatsoever; wherein there is a Trust and a Power for the execution of it. 2ly. It is equally necessary for the same reason, that this latter Paragraph compared with the former, be understood of Officers of a different nature; and thirdly, if the latter had been only an exception out of the former as a Rule; to prevent the plain clashing, and contradiction of the two Clauses with each other; it should have been added, as is usual in the Style and Method of Acts of Parliament in such Cases; **any thing in this Act to the contrary in any wise notwithstanding**, or words to that effect,

Eighthly, Again the same Person is both *Alderman*, and Common-Council Man at the same time; for every *Alderman* is a Member of the Common-Council; now it would be very strange, that the very same Person considered, as a Common-Council-Man; which it is possible he would not have been, had he not been *Alderman* likewise; should be excluded out of this confirming Clause; and yet as an *Alderman* be included, when he is not so much as named in either respect; and when the Representation is the same, and of the same Persons

in both cases, only in the Common-Council-Man, as barely such, it is but Temporary, in the *Alderman* it is perpetual, in the *Alderman* the Representation is more constant; inasmuch as Courts of *Aldermen*, are more frequent and more certain than Common-Councils; and inasmuch as he always Acts in his Ward in that capacity, though neither Court of *Aldermen*, nor Common-Council be Sitting; Lastly, an *Alderman* is a Name of greater Honor, and of a Superior Station; but these are differences only in degree, in dignity, and in duration, not in Nature; but as to the Representation it self, the delegation and the trust reposed, tho in a lower Sphere, they are plainly and manifestly the same in both.

Ninthly, If it be demanded, why was not a new Election of *Aldermen* appointed, as well as of *Common-Council-Men*; the Answer is easie, the *Common-Council*, barely as such, are annual Officers, the *Aldermen* are perpetual; therefore the *Common-Council*, in being, at the making of this Act, was altogether illegal, being wholly chosen since the avoidance of the *Charter*, during which time, all the Proceedings are declared, by this Act, to have been arbitrary and illegal, though some of them, for particular Reasons, contained in the *Proviso*es were confirmed; but an *Alderman* being perpetual, all those *Aldermen* that were so before the Judgment given, and have continued to act as such ever since, or are still surviving, are confirmed, the *Charter* and *Franchises* being yet upon the same bottom, and restored as exactly as they could be to the same state, upon which they stood, and in which they were before the aforesaid Judgment; and for this reason, those *City-Officers* that were so in the sense of the controverted Paragraph, before the Date of the Judgment, would have been confirmed or course by the general meaning and intention of the Act, without any especial *Proviso*es; but that in such Cases *abundans cautela non nocet*; the Act could not be too cautious or

too exprefs in an Affair upon which the Subfiftence and Livelihood of fo many Perfons and Families depended, but now as for thofe *Aldermen* who were made fo, or took upon themfelves to appear and act as fuch, fince the bringing of the Judgment, their Choice being vicious and defective in its Root, and they not being confirmed by any fpecial Proviso, or fo much as named in it, they are difcarded of courfe, and the vacant Wards are of courfe to enter upon a new Choice, when we have feen what Vacancies there ftill remain, after the old and rightful *Aldermen*, that ceafed to act for the Reafons that have been given, have reafumed their Gowns.

Tenthly, If it be ftill further demanded, why is not the time affigned for filling up the Vacancies in the Court of *Aldermen*, if any fuch there be, or fhall happen to be after the reftitution of the old Poffeffors to their refpective Places upon the Bench; as it is in the Cafe of *Common-Council-Men*, whole Election was appointed to be upon the Tenth of *June*, in the Year 1690, the Answer to this likewife is very plain and eafy, and it is this:

Upon the reftitution of the Charter, the Parliament designing a new *Common-Council*, a new *Lord Mayor*, and new *Sheriffs*, there was a neceffity that the time fhould be affigned, otherwife the prefent muft have gone on in their refpective Trufts and Charges, (or elfe there muft have been no fuch Officers at all, neither *Lord Mayor*, nor *Sheriffs*, nor *Common Council*) till the ufual time, when fuch Officers were wont, according to the ancient Cuftoms of the City to be chofen; for thofe ancient Cuftoms being now reftored by this very Act, they could not be altered in any particular inftance without a fpecial Proviso; but in the *Aldermen* it was quite otherwife; when ever a Vacancy happens, let it be at what time of the Year it will, the deftitute Ward may proceed to a new Prefentation, and the Court of *Aldermen* acceptance of a Perfon prefented by them, compleats the Ceremony of his In-

veftiture into that Office and Station; fo that there was no need to appoint a time for the Election of *Aldermen*, and therefore it was not done.

Eleventhly, But now becaufe our Adverfaries will needs be asking of Queftions, let us return the Curiofity on our parts, and ask them a few which they may confider of at their leifure; in the mean time, becaufe our hands are in at answering as well as asking, we will give them fuch Answers as we think moft proper, and let them if they do not like them, afford us fome that are better.

Queft. 1. What is the reafon why the City are enjoined by this Act of Parliament, to proceed to a new Election of *Lord Mayor*, *Sheriffs*, *Chamberlain*, and *Common-Council*, at the times therein particularly fpecified and appointed.

Answer. It was certainly, befides the illegality of the former Choice, that they did not like the Perfons chofen, otherwife it would have been very irrational, not to confirm them till the ufual times of Election of fuch Officers, but on the contrary to put fo great a Body into a Ferment and Contrait within it felf, juft at the time when the King was going upon his *Irish* Expedition, but that they defigned to put the Government of the City, in his abfence in to better and fafer hands, and that indeed was a very good reafon.

Queft. 2. What was the reafon, that if there had been no Election of the Officers aforefaid at the times appointed, it was provided that the old ones fhould continue till the ufual times of Election and no longer, that were in poffeffion of their refpective Charges at the time of the Judgment given.

Answer. The reafon was very plain there was a Faction in the City that had been ftirangely biffed, notwithstanding their boaffed Numbers, in the Election of Members to ferve in this prefent Parliament, which the Perfons that were to manage the Poli at the new Elections for the Officers appointed to be chofen, being deeply fenfible of, and upon the point of defpair, that ever they

should succeed in any new competition, it was suspected by the Parliament, that the Persons in possession would have insisted upon that, and would have declined a Choice; but this, if it were not a probable, yet it was at least a possible thing, and a possibility of such consequence, as deserved a Clause purposely to be inserted, to obviate and prevent the possible Inconveniencies that might arise from it; and this was a further indication how deeply in Love that great Assembly was with the present Managers and management of the City Affairs.

Quest. 3. A third Question to be started is, since in case of new Elections, the old Officers before the Judgment given, were to continue out the remainder of their time, (that time which they served afterwards not being reckoned in Law as any part of their Year) what was the reason they were to continue no longer, notwithstanding in case of a new Election they were to go on through the whole next Year?

Answer. The Answer to this is very easie also; they did not think fit to continue them another Year, who had already to all intents and purposes of Action, Trouble, and Charge, served one whole Year and about four Months already. Let the World judge now, if this be a good Answer; whether they intended that the present pretended *Mayor* should continue for three Years successively together? Or whether there were not a plain *innuendo* in such a Proviso as this, by which he is tacitly barr'd from holding any longer?

And now from all this, I think there is nothing more evident than these two things.

First, The *Aldermen*, so called since the avoidance of the Charter, are made no *Aldermen* by the restitution of it.

Secondly, That Sir T. P. upon these Principles is no *Alderman*, and that by consequence he is no *Lord Mayor*; which two things are so plain by the express Letter, and by the *Latent*; but yet notwithstanding clear and undeniable intention of the

Act of Parliament, that nothing can be more.

But tho nothing can be more plain than this is, and tho one Demonstration be as good as a thousand, yet to sum up all, and that the Gentlemen concerned may not complain they have not their Measure, tho they have their Weight, I will add one Argument farther, and it shall be taken from a Paragraph, *pag. 106.* of this Act, which I will here transcribe.

And be it enacted by the Authority aforesaid, that all Charters, Letters, Patents, and Grants for incorporating the Citizens and Commonalty of the said City, or any of them, and all Charters, Grants, Letters, Patents, and Commissions; touching or concerning any of their Liberties or Franchises; or the Liberties, Privileges, Franchises, Immunities, &c. Of the Mayor, and Commonalty, and Citizens of the City of London; Made or Granted to any Person or Persons whatsoever; by the late King Charles II. since the late Judgment given; or by the late King James II. be, and are hereby declared and adjudged null and void, to all intents and purposes whatsoever.

The plain and clear Inference to be made from which is this, if those Gentlemen, that have assumed to themselves, the Style and Dignity of *Aldermen*, since the avoidance of the City Charter, do hold by virtue of the aforesaid Letters, Patents, &c. For Incorporating the Citizens and Commonalty of the said City, then their Authority is null and void; because the Letters, Patents, under which they hold, are declared and adjudged to be so, unless they can shew some particular Proviso, that may secure them from this general Clause; which I think, I have sufficiently proved they cannot do; or if there be any Authority they can pretend for themselves; let them shew it, and keep their
Gown

Gowns on as long as they please ; but if they do not shew it, off they go, and shall be on again, when the Law and a new Choice pleaseth, not before.

But some may object and say, *ὅστις ἔλαβε ἄδελφον* ; what shall we do for a Lord Mayor, if Sir T. P. be none, I answer Sir J. R. is certainly the Man ; for he was presented together with the other to the Court of *Aldermen* ; and though they pitched by Majority upon the former ; yet since one of these two must of necessity be returned back again to the Common Hall, let them chuse who they will ; the incapacity of the one implies, and infers the choice of the other, the Common Hall presented Sir T. P. as an *Alderman* in competition ; and the *Aldermen* by such another mistake accepted him, as such, if they had protested against the Pre-

sentation of an unqualified Person ; which a Court of *Aldermen* so Modelled were not like to do, the Commons must have presented another in order to a Choice ; but not having made any such exception, and having but one whom they could legally chuse, the error on both hands, as well of the Commons, as the Court of *Aldermen*, devolves and fixes the unquestionable Right upon the only Legal pretender of the two.

Neither doth it signify any thing in this case, that many of the Court of *Aldermen* themselves, had in Law no right to sit there ; for if they had been never so legally qualify'd, yet an unqualify'd Person being presented to them, they could not chuse him, and the choice would of course have devolved upon the other.

 POST-

POST-SCRIPT,

Concerning the

HOSPITALS.

THE confirming Clause for Officers running thus, all Officers and Ministers of the said City, &c. or in the Borough of *Southwark* &c. it hath been argued from thence, that the ejected Officers of the Hospital of *St. Thomas*, are by this Clause restored; but these Men do not consider, that it was the design of this Act, to restore the Ancient Privileges and Immunities of the City, not to abridge any thing of that undoubted Right of Visitation, which the King had by Act of Parliament; and by the grant of King *Edward VI.* while the Charter stood, neither are they Charter Officers, of whom this whole Paragraph is meant, but Officers and Servants at pleasure; that may be turned out, as well without a reason, as with one by the Power that placed them there; only if the King be the Supreme Visitor, as the Sun is not more bright, than it is clear that he is; then the Officers of his placing, cannot be ejected by a Subordinate Power, much less can they replace those, whom he hath ejected; which would render his

Power and Right of Visitation contemptible and vain; besides that, tho the King be the Judge of the Causes of Visitation; otherwise he shall not visit, but when others please, yet the Reasons are notorious for which he did it; one had justify'd the Murder of his Father; and all of them as well Officers, as Governors generally speaking, were Dissenters from the Church of *England*; Enemies to Monarchy; Persons disaffected both to Church and State; and I hope, these were sufficient grounds for a King, not to suffer such to be fed and maintained in his own House. A Papist, whether Governor or Officer; I suppose, it will be granted may be lawfully ejected out of that Trust and Station; and why should then a Dissenter, or a Favourer and Abettor of that Interest be permitted, when they are both Enemies to the establish'd Church; and the Dissenter is likewise an Enemy to the Monarchy of *England*, to which the Papist, to give the Devil his due, is a Friend; as well as to the Episcopal Form of Government in the Church; though he loads

loads and clogs both with such dangerous Innovations, that we cannot accept of those blessings upon his terms.

Again, p. 109. of the said Act it is provided, that all Leases and Grants of any Lands, &c. made by or upon pretence of any Grant or Commission by their Late Majesties; being made for just and valuable considerations; and whereupon the old accustomed yearly rent, or more hath been reserved, payable into the Chamber or Bridg-house, or any of the Hospitals of the said City, &c. shall be as good and valid, as if the same had been made by the Mayor and Commonalty, and Citizens of the said City, under their Common Seal, &c. by which it may seem to be implied, that the Hospitals are so closely and inseparably united to the City and its Charter, that the said Charter being illegally seized into the Kings Hands, (as this Act declares) all Leases made, and other Acts done by the Commission under the Broad-Seal were Illegal, and consequently the tenant, had no sufficient security by any such Grant or

Lease. To which, I answer, that this was really, and is still the Opinion of a great many, that this was the case; and therefore, since Indemnities can never be too full or ample, the scruples of such Men, and the inconveniences in the Administration of the Hospital, that might arise from them, were provided for *ex abundanti* by this Clause; where there was no absolute necessity: Secondly, though as to the Commission, there was no question, but that the Acts done by it, (so far as concerned the Hospitals, in which the King had Right of visiting under the Broad-Seal) being otherwise materially Legal in themselves, were likewise so as to the Authority from whence they sprung; yet the case was altered upon the Dissolution of the Commission, by the ejected *Aldermen* and *Governors*, being restored without the restitution of the City Charter, so that there was now no Legal Authority at all; and therefore, this Provision was necessary, with reference to those Leases or Grants, which had been made during that time.

F I N I S.